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Constitutional Law

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I. Overview of Constitutional Law

A. Nature and Characteristics of Constitutions

§ 1. Definition and nature of "constitution" and "constitutional law"

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 500, 501

The word "constitution" means a declaration of fundamental laws or principles for the government of a nation or state.¹ A constitution is the fundamental law by which all people of the state are governed;² it is the basic charter of state governance.³ A state constitution receives its force from the express will of the people⁴ and is the embodiment of the will of the people⁵ regarding the limits on governmental power.⁶ The legitimacy of any constitution is derived primarily from the consent of those agreeing to be bound by it.⁷

Where a constitution asserts a certain right or lays down a certain principle of law or procedure, it speaks for the entire people as their supreme law.⁸ Whatever the constitution prescribes, the general assembly, and every officer or citizen to whom the mandate is addressed, must do, and whatever it prohibits, the general assembly, and every officer and citizen, must refrain from doing.⁹ The government has broad powers, but the means it uses to achieve its ends must be consistent with the letter and spirit of the constitution.¹⁰ A strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way.¹¹ The powers granted under the Constitution are not infinite; the power the Constitution grants, it also restrains.¹² Although a constitution may be either written (as in the case of the United States) or unwritten (as in the case of Great Britain), the word "constitution," as applied to the organization of our federal and state governments, always implies a written document which is understood to have been enacted by the direct action of the people.¹³ A constitution is a fundamental document, which, in recognizing citizens' rights and establishing government, provides essential checks and balances whose complexity is to be neither undervalued nor disregarded.¹⁴

Constitutional law, which deals with the interpretation and construction of constitutions and the application of this fundamental law to statutes and other public acts because of the American governmental system, occupies an extremely important position in the jurisprudence of this country.¹⁵ Constitutional provisions gather meaning from the experience of the people, and courts should expect that modern society will mold and shape constitutional principles into new and useful forms.¹⁶

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Footnotes

- 1 Marbury v. Madison, 5 U.S. 137, 2 L. Ed. 60, 1803 WL 893 (1803); State ex rel. Stephan v. Finney, 254 Kan. 632, 867 P.2d 1034 (1994); Martin v. Beer Bd. for City of Dickson, 908 S.W.2d 941 (Tenn. Ct. App. 1995).
- 2 State ex rel. Workman v. Carmichael, 241 W. Va. 105, 819 S.E.2d 251 (2018), cert. denied, 140 S. Ct. 98, 205 L. Ed. 2d 24 (2019) and cert. denied, 140 S. Ct. 106, 205 L. Ed. 2d 24 (2019).
- 3 Simpson v. Miller, 241 Ariz. 341, 387 P.3d 1270 (2017).
- 4 Gannon v. State, 303 Kan. 682, 368 P.3d 1024, 329 Ed. Law Rep. 1090 (2016), subsequent determination, 304 Kan. 490, 372 P.3d 1181, 331 Ed. Law Rep. 1117 (2016), subsequent determination, 305 Kan. 850, 390 P.3d 461, 341 Ed. Law Rep. 446 (2017), subsequent determination, 306 Kan. 1170, 402 P.3d 513, 347 Ed. Law Rep. 1186 (2017), subsequent determination, 308 Kan. 372, 420 P.3d 477, 356 Ed. Law Rep. 443 (2018), subsequent determination, 309 Kan. 1185, 443 P.3d 294, 367 Ed. Law Rep. 1121 (2019).
- 5 State v. Buckner, 437 N.J. Super. 8, 96 A.3d 261 (App. Div. 2014), judgment aff'd on other grounds, 223 N.J. 1, 121 A.3d 290 (2015).
- 6 State v. Rodriguez, 347 Or. 46, 217 P.3d 659 (2009).
- 7 Naifeh v. State ex rel. Oklahoma Tax Commission, 2017 OK 63, 400 P.3d 759 (Okla. 2017), as amended, (Aug. 10, 2017).
- 8 Dietz v. State of Ark., 709 F. Supp. 902, 53 Ed. Law Rep. 74 (E.D. Ark. 1989); Shields v. Gerhart, 163 Vt. 219, 658 A.2d 924 (1995).
- 9 State v. Barriga, 165 Conn. App. 686, 140 A.3d 292 (2016).
- 10 Horne v. Department of Agriculture, 135 S. Ct. 2419, 192 L. Ed. 2d 388 (2015).
- 11 Horne v. Department of Agriculture, 135 S. Ct. 2419, 192 L. Ed. 2d 388 (2015).
- 12 United States v. Vaello Madero, 356 F. Supp. 3d 208 (D.P.R. 2019).
- 13 U.S. v. Verdugo-Urquidez, 494 U.S. 259, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990).
- 14 In re Bruno, 627 Pa. 505, 101 A.3d 635 (2014).
- 15 Martin v. Beer Bd. for City of Dickson, 908 S.W.2d 941 (Tenn. Ct. App. 1995).
- 16 Martin v. Beer Bd. for City of Dickson, 908 S.W.2d 941 (Tenn. Ct. App. 1995).

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